

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

RICHARD W. HENDERSON §
VS. § CIVIL ACTION NO. 1:08cv291
UTMB, ET AL. §

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Richard W. Henderson, an inmate at the Stiles Unit, proceeding *pro se*, brought the above-styled action pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this action be dismissed without prejudice as improvidently filed. Additionally, the magistrate judge recommends that the complaint filed in this action should be filed as an amended complaint in civil action no. 1:07cv705, styled *Henderson v. Dickerson*.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff objects to the dismissal of civil action no. 1:07cv705 as improvidently filed. However, a review of the docket for civil action no. 1:07cv705 reveals it has not been recommended for

dismissal as improvidently filed. In fact, plaintiff was ordered to submit an amended pleading on June 10, 2008. Plaintiff apparently misunderstood the recommendation of the magistrate judge in this case to recommend the dismissal of plaintiff's previously-filed action. However, the dismissal of this action will in no way affect plaintiff's other civil action other than to add his amended complaint to that action. Accordingly, the objections should be overruled.

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations. Therefore, it is

ORDERED that the Clerk of Court is **DIRECTED** to file as an amended complaint in civil action no. 1:07cv705, styled *Henderson v. Dickerson*, the document filed as the original complaint in this action.

So **ORDERED** and **SIGNED** this 7 day of August, 2008.



Ron Clark, United States District Judge